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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ELECTRONIC FRONTIER FOUNDATION,

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY,
ET AL.

Defendants.

CASE NO. 4:09-cv-03351-SBA

**DECLARATION OF JENNIFER LYNCH
IN SUPPORT OF PLAINTIFF'S CROSS
MOTION FOR SUMMARY JUDGMENT
AND OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Date: March 27, 2012
Time: 1:00 p.m.
Place: Ctrm. 1, 4th Floor
Hon. Sandra Brown Armstrong

DECLARATION OF JENNIFER LYNCH

1
2 1. I am an attorney of record for Plaintiff Electronic Frontier Foundation (EFF) in this
3 matter. I am a member in good standing of the California State Bar and am admitted to practice
4 before this Court. I have personal knowledge of the matters stated in this declaration. If called upon
5 to do so, I am competent to testify to all matters set forth herein.

6 2. EFF is a nonprofit corporation established under the laws of the Commonwealth of
7 Massachusetts with offices in San Francisco, California and Washington, D.C. EFF is a donor-
8 supported membership organization that works to inform policymakers and the general public
9 about civil liberties issues related to technology and to act as a defender of those liberties. In
10 support of its mission, EFF uses the Freedom of Information Act (FOIA) to obtain and disseminate
11 information concerning the activities of federal agencies.

12 3. On February 25, 2008, EFF faxed FOIA request letters to the Central Intelligence
13 Agency (CIA), Department of Homeland Security (DHS)'s components Office of Inspector
14 General (OIG) and Office of General Counsel (OGC), Department of Defense (DOD), Defense
15 Intelligence Agency (DIA), National Security Agency (NSA), Federal Bureau of Investigation
16 (FBI), Office of Director of National Intelligence (ODNI), Department of Energy (DOE) and
17 Department of State (DOS) requesting copies of all reports submitted by each agency to the IOB
18 pursuant to Section 2.4 of Executive Order 12863 from January 1, 2001 through February 25,
19 2008.

20 4. On June 19, 2009, EFF faxed similar letters to the CIA, DHS's components OIG and
21 OGC, DOD, DIA, NSA, DOJ's components FBI and Office of Attorney General (OAG), ODNI,
22 DOE and DOS. The letters requested copies of all records created pursuant to each agency's role
23 under Executive Order 13462.

24 5. Attached hereto as Exhibit 1 is a true and correct copy of a fourth quarter 2008 9-page
25 Department of the Army Inspector General (DAIG) quarterly report released by Defendant DOD in
26 response to one of EFF's FOIA requests at issue in this case. The Bates page numbers for this
27 document are 1485-93.

6. Attached hereto as Exhibit 2 is a true and correct copy of a first quarter 2007 report from the DAIG released by DOD in response to one of EFF's FOIA requests at issue in this case. The Bates page numbers for this document are 864-895.

7. Attached hereto as Exhibit 3 is a true and correct copy of a second quarter 2006 report from the Assistant to the Secretary of Defense for Intelligence Oversight (ASTD(IO)) released by DOD in response to one of EFF's FOIA requests at issue in this case. The Bates page numbers for this document are 41-49.

8. Attached hereto as Exhibit 4 is a true and correct copy of a second quarter 2003 report from the ASTD(IO) released by DOD in response to one of EFF's FOIA requests at issue in this case. The Bates page numbers for this document are 1218-22.

9. Attached hereto as Exhibit 5 is a true and correct copy of a fourth quarter 2005 report from the ASTD(IO) released by DOD in response to one of EFF's FOIA requests at issue in this case. The Bates page numbers for this document are 9-14.

10. Attached hereto as Exhibit 6 is a true and correct copy of several pages from a declaration the FBI submitted in support of its motion for summary judgment in *ACLU of Wash. v. DOJ*, No. 09-0642, 2011 U.S. Dist. LEXIS 26047 (W.D. Wash. Mar. 10, 2011). The declaration is available on the PACER electronic docket for the case at Docket No. 39-2.

11. Attached hereto as Exhibit 7 is a true and correct copy of several pages from a declaration the FBI submitted in support of its motion for summary judgment in *ACLU v. ODNI*, No. 10-4419, 2011 U.S. Dist. LEXIS 132503 (S.D.N.Y. Nov. 15, 2011). The declaration is available on the PACER electronic docket for the case at Docket No. 34-13.

12. Attached hereto as Exhibit 8 is a table I created comparing specific paragraphs from the Hardy declarations that the FBI submitted in *ACLU v. ODNI*, *ACLU of Wash. v. DOJ*, and this case.

13. Attached hereto as Exhibit 9 is a true and correct copy of a report of intelligence violations that the FBI released in response to one of EFF's FOIA requests at issue in this case. The Bates page numbers for this document are Cardozo-IOB-67-70.

1 14. Attached hereto as Exhibit 10 are true and correct copies of reports of intelligence
2 violations that the FBI released in response to one of EFF's FOIA requests at issue in this case. The
3 Bates page numbers for these documents are Hofmann-IOB-1075, Hofmann-IOB-594, and
4 Hofmann-IOB-2374.

5 15. Attached hereto as Exhibit 11 is true and correct copy of a first quarter 2006
6 ASTD(IO) Report, that DOD released in response to one of EFF's FOIA requests at issue in this
7 case. The Bates page numbers for this document are 36-40

8 16. Attached hereto as Exhibit 12 is true and correct copy of a first quarter 2004
9 ASTD(IO) Report that DOD released in response to one of EFF's FOIA requests at issue in this
10 case. The Bates page numbers for this document are 1234-37.

11 17. Attached hereto as Exhibit 13 is true and correct copy of a second quarter 2004
12 ASTD(IO) Report that DOD released in response to one of EFF's FOIA requests at issue in this
13 case. The Bates page numbers for this document are 1238-42.

14 18. Attached hereto as Exhibit 14 is true and correct copy of a third quarter 2006
15 ASTD(IO) Report that DOD released in response to one of EFF's FOIA requests at issue in this
16 case. The Bates page numbers for this document are 63-68.

17 19. Attached hereto as Exhibit 15 is a true and correct copy of a letter from Senators
18 Feingold and Rockefeller to Department of Homeland Security (DHS) Secretary Michael Chertoff
19 that the DHS released in response to one of EFF's FOIA requests at issue in this case. DHS has
20 assigned this letter Document number 25. The Bates page numbers for this document are 55-58.
21 Also attached is a true and correct copy of letter from DHS Secretary Michael Chertoff to Senator
22 Feingold. The Bates page numbers for this document are 59-65.

23 20. Attached hereto as Exhibit 16 are true and correct copies of several reports that the
24 FBI released in response to one of EFF's FOIA requests at issue in this case. The FBI-assigned
25 IOB Matter Numbers and Bates page numbers for these documents are: FBI IOB Matter 2006-215
26 at Hofmann-IOB-654-56; IOB Matter 2006-226 at Hofmann-IOB-699-701; FBI IOB 2006-235 at
27 Hofmann-IOB-696; and FBI IOB Matter 2006-221 at Hofmann-IOB-693.

21. Attached hereto as Exhibit 17 are true and correct copies of several reports that the FBI released in response to one of EFF's FOIA requests at issue in this case. The FBI-assigned IOB Matter Numbers and Bates page numbers for these documents are: FBI IOB Matter 2006-281 at Hofmann-IOB-774; FBI IOB Matter 2006-307 at Hofmann-IOB-769-71, 771; FBI IOB Matter 2008-1194 at Cardozo-IOB-67-70.

22. Attached hereto as Exhibit 18 are true and correct copies of several reports that the FBI released in response to one of EFF's FOIA requests at issue in this case. The FBI-assigned IOB Matter Numbers and Bates page numbers for these documents are: IOB Matter 2004-75 at Hofmann-IOB-317-18; IOB Matter 2004-79 at Hofmann-IOB-381; and IOB Matter 2005-05 at Hofmann-IOB-388.

23. Attached hereto as Exhibit 19 are true and correct copies of memoranda from DHS to the general counsel of the IOB. DHS has designated these documents numbers DHS Doc. 8 and DHS Doc. 33. The Bates pages for these documents are 13-16 (DHS Doc. 8) and 44-51 (DHS Doc. 33).

24. Attached hereto as Exhibit 20 are true and correct copies of several reports that the FBI released in response to one of EFF's FOIA requests at issue in this case. The Bates page numbers for these documents are: Hofmann-IOB-940-41, Hofmann-IOB-323, Hofmann-IOB-388, and Hofmann-IOB-998.

25. Attached hereto as Exhibit 21 are true and correct copies of several reports that the FBI released in response to one of EFF's FOIA requests at issue in this case. The Bates page numbers for these documents are Hofmann-IOB-572, Hofmann-IOB-809, and Hofmann-IOB-1075.

26. Attached hereto as Exhibit 22 are true and correct copies of several reports that the FBI released in response to one of EFF's previous FOIA requests litigated in *EFF. v. DOJ*, Civ. No. 07-00656 (D.D.C. April 10, 2007). The Bates page numbers for these documents are NSL VIO-18194, NSL VIO-24059, and NSL VIO-1708.

27. Attached hereto as Exhibit 23 are true and correct copies of a page from an ASTD(IO) Report released by DOD in response to EFF's FOIA request at issue in this case. The Bates page for this document is 1241. The first version of the document was produced in one of DOD's original productions. DOD released the second version of the document earlier this year after the Supreme Court decided the case *Milner v. U.S. Navy*, 131 S.Ct. 1259 (2011).

28. Attached hereto as Exhibit 24 are a true and correct copies of two pages from an ASTD(IO) Report released by DOD in response to EFF's FOIA request at issue in this case. The Bates pages for this document are 1234-1235. The first version of the document was produced in one of DOD's original productions. DOD released the second version of the document earlier this year after the Supreme Court decided the case *Milner v. U.S. Navy*, 131 S.Ct. 1259 (2011).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Signed this 20th day of December, 2011.

/s/ Jennifer Lynch
Jennifer Lynch

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2011, I electronically filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system.

Executed on December 20, 2011, in San Francisco, California.

/s/ Jennifer Lynch

Jennifer Lynch